

APPEAL NO. 031297
FILED JULY 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 9, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the seventh quarter, January 17 through April 17, 2003. The appellant (carrier) appealed, arguing that insufficient evidence exists in the record to support the findings and conclusions of the hearing officer. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. The parties stipulated that the claimant reached maximum medical improvement on March 2, 2000, with a 24% impairment rating and that the qualifying period for the seventh quarter began on October 5, 2002, and ended on January 3, 2003.

The carrier asserts that the claimant's unemployment during the qualifying period was not a direct result of his impairment. We have noted that a finding that the claimant's unemployment or underemployment is a direct result of the impairment is sufficiently supported by evidence if the injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. In this instance, there is evidence from which the hearing officer could determine that the claimant's injury resulted in permanent impairment. Although the claimant was released to return to work full time, he was released with a thirty-pound weightlifting restriction. Additionally, as stated in Texas Workers' Compensation Commission Appeal No. 982993, decided February 5, 1999:

When a claimant has work restrictions imposed after a compensable injury, this, in effect, will narrow the field regarding the number and types of jobs available to that claimant. A claimant who was injured at a sedentary job should not have a more difficult time proving direct result than a claimant who sustained an injury while doing a heavy job. Under the facts of this case, the focus should not be solely on what type of job the claimant had before or on whether the claimant is physically able to perform that old job. Instead, one must consider (1) why was the claimant unemployed during the filing period and (2) did the impairment affect or impact the claimant's unemployment or underemployment situation.

Rule 130.102(d)(5) provides, in pertinent part, that an injured employee has made the required good faith effort if the employee "has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Subsection (e) further provides that the injured worker "who is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts." Whether the claimant satisfied the good faith requirement for SIBs entitlement as provided for in Rule 130.102(e) was a factual question for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge